

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

October 27, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Amend Contract with Intelligent Medical Objects Inc. for the continued use of Medical Terminology Software for Electronic Health Records

RECOMMENDATION(S)

Approve Amended and Restated Terms and Conditions to License **Agreement No. 20-1052 A-1** (Contract 4400006010) with Intelligent Medical Objects Inc., for translating software that converts medical terminology into standardized billing codes increasing the total contract amount by \$276,534.34 from \$315,500 to \$592,034.34, and extending the total contract period from February 21, 2018 through July 13, 2023.

(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of the recommendation will not result in the use of Discretionary General Funding (Net County Cost) as the additional cost of \$276,534.34 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Adequate appropriation and revenue have been included in the Arrowhead Regional Medical Center (ARMC) 2020-21 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Intelligent Medical Objects, Inc. (IMO) develops, manages, and licenses medical vocabularies and software applications that standardize medical terminology at healthcare organizations. Physicians can use Intelligent Medical Objects vocabulary-enabled products to quickly perform sophisticated web searches to find clinically relevant results. The terminology database includes over 260,000 terms expressing clinical intent, which enables Electronic Health Records systems to become more physician friendly, resulting in improved physician utilization and satisfaction, as well as an accelerated revenue cycle. The IMO proprietary software converts medical terminology into standardized billing codes, allowing physicians to seamlessly interact with electronic health records systems (EHR) to capture necessary codes at the time the medical information is entered. ARMC has contracted with Intelligent Medical Objects, Inc. for their proprietary software since 2014.

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On February 13, 2018 (Item No. 9), the Board authorized the Purchasing Agent to issue Contract No. 4400006010 with Intelligent Medical Objects, Inc. for the purchase of translating clinical software license to provide reliable and standardized medical billing terminology for physicians, in the amount of \$315,500, for the period of February 21, 2018, through February 20, 2021.

The IMO software was originally licensed for compatible use with the Medical Information Technology, Inc. (MediTech) EHR. ARMC is in the process of transitioning to the new Epic EHR. The Amended and Restated Terms and Conditions extends the term of the MediTech license without modification for an additional year and adds new terms to the license for the Epic EHR compatible version beginning January 1, 2021 through July 13, 2023. The Amended and Restated Terms and Conditions are IMO's standard commercial terms, as negotiated by the County, and includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law is Delaware
 - The County standard contract requires California governing law.
 - Potential Impact: The contract will be interpreted under Delaware law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total contract amount.
2. The contract does not address attorneys' fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Delaware law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the contract.
3. Limitation of liability of IMO to the County of the greater of US \$225,000 or the total license fees paid to IMO for the applicable license solution for the 12 months preceding the claim, and does not exclude gross negligence, willful misconduct or violations of law.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
4. The contract does not require IMO to meet the County's standard insurance requirements.
 - The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: The County has no assurance that IMO will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total contract amount.
5. The contract does not allow for termination for convenience.
 - The County standard contract gives the County the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.

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- Potential Impact: Any attempted termination by County without cause would result in payment liability for the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

6. Venue is State of Delaware

- The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
- Potential Impact: Having a venue in the State of Delaware may result in additional expenses that exceed the amount of the contract.

ARMC recommends the approval of this contract with Intelligent Medical Objects Inc as Intelligent Medical Objects Inc. is the preferred clinical interface terminology partner for ARMC's future EPIC Electronic Health Record System. This a non-competitive procurement as Intelligent Medical Objects Inc. is both the Meditech and EPIC clinical interface terminology partner.

PROCUREMENT

This is a non-competitive procurement as Intelligent Medical Objects, Inc. software is the Meditech (ARMC's electronic health records system) vendor selected clinical interface terminology partner and the only application fully integrated with Meditech system.

Purchasing supports the functional justification for this non-competitive procurement

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, County Counsel, 387-5455) on August 31, 2020; Purchasing Department (Michelle Churchill, Supervising Buyer, 387-2070) on October 2, 2020; ARMC Budget (Chen Wu, Finance Budget Officer, 580-3165) on October 1, 2020;. Finance (Amanda Trussell, Principal Administrative Analyst, 387-5423) on October 5 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on October 9, 2020.

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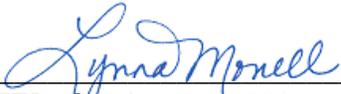
Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Robert A. Lovingood Seconded: Josie Gonzales

Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: October 27, 2020



cc: ARMC - Gilbert w/agree
Contractor - C/O ARMC w/agree
File - w/agree

CCM 10/29/2020